

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

In Re: Memphis Engraving Co., Inc. d/b/a Color Craft)
 Personal Property Account No. P-122544 T-A) Shelby County
 Tax years 2004, 2005)

INITIAL DECISION AND ORDER

Statement of the Case

This is a direct appeal pursuant to Tenn. Code Ann. section 67-1-1005(b) from the following back assessments/reassessments of the subject property:

Tax Year	Original Assessment	Revised Assessment	Back Assessment/ Reassessment
2004	\$261,900	\$304,350	\$42,450
2005	\$687,150	\$744,330	\$57,180

The appeals were received by the State Board of Equalization ("State Board") on June 22, 2006.

The undersigned administrative judge conducted a hearing of this matter on October 19, 2006 in Memphis.¹ The appellant Memphis Engraving Company, Inc., d/b/a Color Craft ("Color Craft"), was represented by Mark J. Grai, Esq., of The Winchester Law Firm (Memphis). Assistant County Attorney Thomas Williams appeared on behalf of the Shelby County Assessor of Property.

Findings of Fact and Conclusions of Law

Color Craft produces a variety of labels for upwards of 1,000 clients at its plant on Vance Avenue in Memphis. These labels are fabricated from pre-cut rolls of paper or and/or other materials (e.g., film; adhesive) that the company purchases from its suppliers.

At issue in this appeal is the status of Color Craft's "committed inventory" – i.e. as explained by Vice President of Sales David Seuss, those "application-specific" rolls of paper which are ordered by the company to meet the needs of a particular customer.² Upon receipt of these materials at its plant, Color Craft tags them with a number indicating the job to which they

¹In lieu of closing arguments, counsel for the parties filed post-hearing briefs in early November, 2006.

²The disputed portions of the back assessments/reassessments under appeal amount to \$29,715 in tax year 2004 and \$46,400 in tax year 2005.

are solely dedicated. Exhibit A. If Color Craft's customer cancels the order, that client is contractually liable for the cost of such materials. Depending on the extent of processing (such as die-cutting or printing) required, completion of a job involving committed inventory may take as long as several weeks.

Elsewhere at the plant, Color Craft maintains a stock of paper rolls which are suitable for general use. The tags placed on this "uncommitted" inventory do not bear a job identification number. Exhibit A. Color Craft separately accounts for committed inventory in its books and records as "work in process."³ The company did not list such inventory on its tangible personal property schedules for tax years 2004 and 2005.

Following an audit of the subject account by CPA Neill Murphy of Mendola & Associates, the Assessor picked up Color Craft's unreported committed inventory as "raw materials" – defined in State Board Rule 0600-5-.01(8) as "items of tangible personal property, crude or processed, which are held or maintained by a manufacturer for use through refining, combining, or any other process in the production or fabrication of another item or product."

Color Craft, which has the burden of proof in this proceeding under the terms of State Board Rule 0600-1-.11(1), contends that:

...[I]ts ordering of customer-specific quality, type and quantity of paper stock for its customer commenced the production process. Upon its ordering of the specific paper, (Color Craft) was contractually committed to purchase that paper stock from its supplier, and that supplier was then acting as (Color Craft)'s agent in transforming ordinary paper stock into rolls of paper having the specific characteristics needed for the particular customer of (Color Craft). The ordinary paper held by (Color Craft)'s supplier/agent underwent a transformation into "committed inventory," the customer-specific paper stock then used by (Color Craft) to complete the manufacturing process.

Taxpayer's Post-Hearing Memorandum, pp. 4-5. Therefore, the appellant argues, its committed inventory constitutes "goods in process" which are exempt from taxation.

But the record does not seem to support the characterization of Color Craft's suppliers as its "agents" with respect to any part of the *manufacturing* process. Presumably, although no sample contract was introduced into evidence, these suppliers are independent entities which simply agree to furnish Color Craft with items of a certain description for a specified price. Color Craft has no apparent right to possess those items prior to shipment or, for that matter, to control the suppliers' means of production. Color Craft's contractual commitment to pay for all materials ordered from its suppliers does not initiate the fabrication of a new product –

³It is undisputed that Color Craft's general inventory of paper rolls is assessable as raw materials.

particularly considering the company's right to recover the cost of the materials from the customer in the event of cancellation.

Thus, like the bulk purchaser of linters in the recent appeal of Buckeye Technologies, Inc. (Shelby County, Tax Year 2004, Initial Decision and Order, March 24, 2006), Color Craft does not itself manufacture the tagged materials claimed to be goods in process. Mr. Grai seeks to distinguish Buckeye Technologies primarily on the ground that, "[d]epending on the outcome of Buckeye's subsequent testing, the linters could be used in any number of jobs and/or for any number of customers or may not have been suitable for any use by Buckeye." Taxpayer's Post-Hearing Memorandum, p. 4. Yet, however limited the utility of Color Craft's committed inventory may be, the fact remains that the appellant does not begin to change the form or appearance of these items until *after* they are received, tagged, and briefly stored in the plant. Hence the administrative judge is not persuaded that this property has been wrongfully assessed to this taxpayer as raw materials. See Morgan & Hamilton Co. v. City of Nashville, 270 S.W. 75 (Tenn. 1925).

Order

It is, therefore, ORDERED that the back assessments/reassessments of the subject property for tax years 2004 and 2005 be affirmed.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal "**must be filed within thirty (30) days from the date the initial decision is sent.**" Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal "**identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order**"; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 8th day of December, 2006.

Pete Loesch

PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Mark J. Grai, Esq., The Winchester Law Firm
Tameaka Stanton-Riley, Appeals Manager, Shelby County Assessor's Office

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